

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Brahmin Broadcasting Corporation	)	File Number: EB-07-DV-132
	)	
Licensee of Station KRAE-AM	)	NAL/Acct. No.: 200732800006
Cheyenne, WY	)	FRN: 0010593085
Facility ID # 35510	)	

**FORFEITURE ORDER**

**Adopted: February 27, 2008**

**Released: March 3, 2008**

By the Regional Director, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of four thousand, two hundred dollars (\$4,200) to Brahmin Broadcasting Corporation ("Brahmin"), licensee of station KRAE, in Cheyenne, Wyoming, for repeated violation of Section 73.49 of the Commission's Rules ("Rules").<sup>1</sup> On July 31, 2007, the Enforcement Bureau's Denver Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of \$7,000 to Brahmin for failing to enclose the KRAE antenna tower within an effective locked fence or other enclosure.<sup>2</sup> Brahmin filed a response ("Response") on August 20, 2007. In this *Order*, we consider Brahmin's arguments that the forfeiture amount should be reduced based on Brahmin's good faith efforts to repair the fences surrounding the KRAE antenna tower, and based on Brahmin's history of compliance with the Commission's Rules.

**II. BACKGROUND**

2. On March 6, 2007, agents from the Enforcement Bureau's Denver District Office conducted an inspection of a structure located at approximately 41° 07' 26" north latitude and 104° 49' 12" west longitude in Cheyenne, Wyoming. Close observation revealed that a single wooden panel section of the base fence, approximately six feet in width, was laying on the ground, and allowing access to the structure, a series-fed antenna with an insulated base. The agents observed that the structure resided in an open field located within a residential area. A search of the Commission's database on-scene confirmed that the structure was broadcasting the signal of KRAE, an AM station licensed to Brahmin, in Cheyenne, Wyoming.

3. Later on March 6, 2007, the agents arrived at the KRAE studio and issued a verbal warning regarding the base fence violation to the two Brahmin employees present for the inspection. The agents interviewed Brahmin's business manager and the chief engineer for KRAE. During the interview, the engineer acknowledged that he had received a call on February 20, 2007, regarding an issue with KRAE's base fence. The engineer assumed that the caller, a former owner of the station, was merely referring to a single vertical slat of the fence, which the engineer recounts that he had repaired the week prior to the call, when informing Brahmin of a "hole in the fence."<sup>3</sup> The engineer admitted on March 6,

<sup>1</sup> 47 C.F.R. § 73.49.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732800004 (Enf. Bur., Western Region, Denver Office, released July 31, 2007).

<sup>3</sup> *NAL* at 1; *Response* Affidavit at 1.

2007, that he had yet to revisit the KRAE transmitter site in order to assess the damage to the fence as of the date of the agents' interview. The KRAE staff indicated to the agents that they would immediately repair the fence. Brahmin confirms in the *Response* to the *NAL* that the fence was repaired on March 6, 2007, and was completely replaced in May of 2007.

4. On July 31, 2007, the Denver Office issued a *NAL* in the amount of \$7,000 to Brahmin, finding that Brahmin apparently repeatedly violated Section 73.49 of the Rules<sup>4</sup> by failing to enclose the KRAE antenna tower within an effective locked fence or other enclosure. In its *Response*, Brahmin requests a reduction of the proposed forfeiture based on its good faith efforts to repair the fences surrounding the KRAE antenna tower, and its history of compliance with the Commission's Rules.

### III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement").<sup>7</sup> In examining Brahmin's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>8</sup>

6. Section 73.49 of the Rules states that antenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed within effective locked fences or other enclosures.<sup>9</sup> Individual tower fences need not be installed if the towers are contained within a protective property fence.<sup>10</sup> In adopting the *Report and Order* promulgating the most recent amendment of Section 73.49, the Commission stated that "a fencing requirement is necessary to protect the general public."<sup>11</sup> KRAE broadcasts from a series-fed tower with an insulated base which, pursuant to Section 73.49, must be enclosed with an effective locked fence or other enclosure. At the time of the March 6, 2007, inspection, a six foot wide panel of the fence was found on the ground, rendering the remaining fence ineffective. The structure is sited in a residential portion of the city, however; there was no perimeter fencing to further dissuade the public from approaching the structure. Because there was no perimeter fence, the base fence around the individual AM tower must be effective.<sup>12</sup> With an entire panel missing from the fence, the agents were able to easily access the KRAE tower at the time of the inspection.

7. In its *Response*, Brahmin does not dispute that, at the time of the March 6, 2007, inspection, a six foot wide panel of the KRAE tower fence was found on the ground, rendering the remaining

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<sup>4</sup> 47 C.F.R. § 73.49.

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>8</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>9</sup> 47 C.F.R. § 73.49.

<sup>10</sup> 47 C.F.R. § 73.49.

<sup>11</sup> *Review of the Technical and Operational Regulations of Part 73, Subpart A, AM Broadcast Stations*, 59 Rad. Reg. 2d (Pike & Fischer) 927, ¶6 (1986) ("*Report and Order*").

<sup>12</sup> *See Butterfield Broadcasting Corporation*, 20 FCC Rcd 20237 (EB 2005).

fence ineffective. Instead Brahmin states that its engineer repaired the fence on February 14, 2007, and believed that the repair took care of the concerns in the message the station received on February 20, 2007. Brahmin states that when it was alerted to another problem with fence on March 6, 2007, by the Denver agents, its engineer immediately fixed the fence that day. Reductions based on good faith efforts to comply generally involve situations where violators demonstrated that they initiated measures to correct or remedy violations,<sup>13</sup> or that they had established compliance programs in place,<sup>14</sup> prior to the Commission's involvement. While Brahmin's effort to repair the fence after the March 6, 2007, inspection by the Denver agents does not support a good faith reduction, we find that Brahmin's effort to repair the fence prior to the inspection does support a good faith reduction. Consequently, we reduce the forfeiture from \$7,000 to \$5,600.

8. Brahmin also requests that a reduction be given for its history of compliance with the Commission's Rules. We have reviewed our records and we concur. Consequently, we reduce Brahmin's forfeiture amount from \$5,600 to \$4,200. Based on the information before us, having examined it according to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*, we find that reduction of the proposed forfeiture to \$4,200 is warranted.

#### IV. ORDERING CLAUSES

9. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Brahmin Broadcasting Corporation, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$4,200 for repeatedly violating Section 73.49 of the Rules.<sup>15</sup>

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>16</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures.

<sup>13</sup> See *Radio One Licenses, Inc.*, 17 FCC Rcd 20408 (EB 2002), *recon. denied*, 18 FCC Rcd 15964 (2003).

<sup>14</sup> See *Tidewater Communications, Inc.*, 18 FCC Rcd 5524, 5525 (EB 2003).

<sup>15</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.49.

<sup>16</sup> 47 U.S.C. § 504(a).

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Brahmin Broadcasting Corporation, at its address of record, and its counsel of record, Barry A. Friedman, Esquire.

**FEDERAL COMMUNICATIONS COMMISSION**

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau